

IN THE MATTER OF The Ontario Human Rights Code,
R.S.O. 1981, c.53, as amended.

B E T W E E N:

HEATHER PETERSON

Complainant

- and -

ROSS ANDERSON and JEAN ANDERSON

Respondents

B E F O R E: Professor Constance B. Backhouse
Chair, Board of Inquiry

HEARINGS: Stratford, Ontario
31 January 1991
4 February 1991
14 February 1991
11 March 1991

APPEARANCES: Cathryn Pike
Anthony D. Griffin
Counsel for the Ontario Human Rights Commission

Mary Truemner
Counsel for the Complainant

Richard Linley
Counsel for the Respondents

On 6 November 1990, I was appointed to serve as a Board of Inquiry by the Minister of Citizenship, pursuant to the Ontario Human Rights Code, 1981, to hear the amended complaint made by Heather Peterson dated 18 August 1990 against Ross and Jean Anderson. The complainant alleged discrimination in accommodation on the basis of sex and family status.

THE FACTS

This case turns primarily on issues of fact, since the complainant and respondents have provided differing interpretations of the relevant events.

The Complainant's Perspective

In May 1984, Heather Peterson moved into apartment #9 at 104 Oxford Street, Stratford, Ontario. She rented the two-bedroom, unfurnished, basement apartment from the superintendent, Fred Thompson, who did not ask her to sign a lease. She informed Fred Thompson that she intended to find a roommate to occupy the second bedroom, and he indicated that he had no disagreement with this. Shortly after she moved in, she first met Ross and Jean Anderson, who had become the new owners of the building. According to Heather Peterson, they indicated nothing amiss about the arrangements she had worked out regarding roommates.

In the summer of 1984, Donna Reed moved in to become the first of what would ultimately prove to be a series of roommates

for Heather Peterson. Prior to Donna Reed's arrival, the complainant notified the new superintendent, (Val Lauzé, who had replaced Fred Thompson), of Donna Reed's tenancy. There were apparently no difficulties with this first roommate, except that she moved out around Christmas time.

The second roommate, a woman whose name Heather Peterson could not recall, was more problematic. A waitress at the Queen's Hotel in Stratford, she worked late hours and usually did not get home until after 2:00 a.m. Frequently accompanied by loud and intoxicated male acquaintances, this roommate created noisy disturbances which interfered with Heather Peterson's sleep three or four times a week. As a result, the roommate's tenure lasted less than two months. No-one else appeared to be bothered by the commotion, and Heather Peterson testified that she received no complaints from tenants, superintendents or owners. Indeed, she testified that she never received complaints from other tenants or from the supervisors regarding any of the roommates she had while resident in the apartment.

Shortly thereafter, the third roommate, Cherie, moved in. Once again, Heather Peterson notified Val Lauzé, the superintendent, about the arrangement. Initially Cherie appeared to be a satisfactory roommate, but eventually her boyfriend began staying overnight and spending extended periods of time at the apartment, a situation which Heather Peterson found untenable.

Cherie and Heather were sharing food expenses at the time, and Heather felt that Cherie's boyfriend was "free-loading" unfairly, as he did not offer to pay any of the grocery bills. Heather Peterson threatened to notify Cherie's father in nearby St. Mary's, if Cherie continued to allow her boyfriend to stay over.

One subsequent night, the complainant did telephone Cherie's father, who threatened to remove the boyfriend physically if he had not left in twenty minutes. Both Cherie and her boyfriend left immediately. Cherie's father apparently advised Heather Peterson that she should change the lock, as he feared some form of retaliation from Cherie's boyfriend. Heather Peterson hired a locksmith to change the lock at her own expense the next day, and testified that she provided a passkey for the new lock to superintendent Lauzé.

According to the complainant, she was suspicious that her roommate might still try to gain entry to the apartment, and she telephoned home from work that afternoon. When she discovered that the line was busy, she contacted the police to report an unauthorized entry. Two police officers in a cruiser arrived at the apartment, and discovered that the intruder was Cherie. The police phoned Heather Peterson upon their arrival at the apartment, to tell her that it was Cherie who was there. The complainant arranged to leave work early, returned home, and watched Cherie collect her belongings while the police remained

to observe. Heather Peterson testified that she informed Val Lauzé about the incident later, and although the superintendent seemed curious about the situation, she did not seem upset.

However, shortly thereafter Val Lauzé advised Heather Peterson that the Andersons were thinking of evicting her. The complainant telephoned the Andersons, and advised them that Cherie had moved out, and that she sincerely wished to stay on in the apartment. Ross Anderson told her that any future roommates would have to fill out an application form and be approved by the superintendent before moving in. Heather Peterson readily agreed to this new procedure.

No application forms were ever supplied to the complainant, so she adopted the format of providing written documentation regarding a new roommate's name and employment to the superintendent. This procedure seemed to be acceptable to Val Lauzé, who notified her verbally of the requisite approval. Larry Norton, the fourth roommate, was approved in this manner. In addition, the matter of a lease was raised for the first time at this point, and Heather Peterson, Larry Norton, Ross Anderson and Jean Anderson signed a one-year lease. The lease indicated that there were to be no boarders or roomers without written permission from the landlords.

Larry Norton's tenancy was apparently without incident, and

he moved out in 1986. The fifth roommate was Joe Jesso. Heather Peterson submitted a written note with Joe's name, age, and employment information to Lloyd (Harley) Rumble, the superintendent who had taken over from Val Lauzé. At this point she specifically asked Mr. Rumble if he needed a special application form to be filled out, to which he responded "nah". Joe Jesso stayed only for a few months, and was succeeded by the sixth and final roommate, Hugh Jesso, Joe's brother, who had recently arrived in Stratford from Newfoundland. Once again, Heather Peterson followed the accustomed procedure in obtaining approval from the superintendent.

Heather Peterson and Hugh Jesso became romantically involved in October 1986 (and would ultimately marry on 30 July 1988.) In January 1987, Heather Peterson learned that she was pregnant, with an estimated September delivery date. When she went to pay the rent at the end of April, Lloyd Rumble told her that the apartment owners, the Andersons, had asked him "if the girl in Apartment Number Nine was pregnant". Heather Peterson affirmed that she was pregnant, and expecting her first child in September. The superintendent's next question, "Are you intending to give the baby up for adoption?" quite took her aback. Otherwise, according to Heather Peterson, he told her that she would have to move out before the birth because "Mr. Anderson didn't want kids in the building." When the complainant asked whether it was because she wasn't married, Lloyd Rumble

replied that had nothing to do with it.

Heather Peterson telephoned Ross Anderson in May, to tell him that she didn't want to move, and to ask whether she might be able to stay on a trial basis as long as there were no complaints from other tenants. Ross Anderson refused, and on 3 July 1987, an eviction notice was delivered to the apartment. The notice gave as the reason for eviction that a family member of the owners wished to move into the apartment. Heather Peterson's suspicions were aroused when another tenant, Clara L'Heureux, subsequently told her that she had seen Lloyd Rumble showing the apartment to prospective new tenants who were not Anderson relatives.

On 15 July 1987, Heather Peterson and Hugh Jesso rented alternate and more costly accommodation, effective 1 September 1987, at 19-716 Downie Street, where they were required to pay first and last months' rent as a deposit. Forced to terminate her job because of a bout of pancreatitis requiring brief hospitalization, Heather Peterson was financially distressed by the large rental payment for the new apartment. Consequently she was late paying her August rent to the Andersons. This resulted in an angry and confrontational exchange between Heather Peterson and Jean Anderson in front of the Oxford street building. Jean Anderson demanded of the complainant when she intended to pay the rent, and Heather Peterson explained about the large down-payment

on the new apartment, her hospitalization and the loss of her job. She added that she would pay them, but that on her "list of priorities they were at the bottom of the list." According to the complainant, Jean Anderson responded by pointing her finger at Heather Peterson's stomach, and retorting that "if [she] hadn't got herself in that predicament, that [she] wouldn't be looking for another place to live." The rent was ultimately paid, two weeks late.

In late August, Heather Peterson had one last conversation with Lloyd Rumble. When the complainant confronted him with the accusation that she was being evicted because she was pregnant, Lloyd Rumble agreed. "Were we bad tenants?" asked Heather Peterson. It was Heather Peterson's recollection that Lloyd Rumble replied: "Hell, no, I never had any problems with yous." (sic)

The Respondents' Perspective

Ross and Jean Anderson, residents of Mitchell, Ontario, jointly purchased the apartment building at 104 Oxford Street in the spring of 1984. They visited the apartment building approximately twice a month, but employed apartment superintendents, initially Val Lauzé and later Lloyd Rumble, to supervise the apartment on an on-going basis. Ross Anderson testified that the selection criteria they used in evaluating prospective tenants were economic, to ensure that the applicants

could afford to pay the rent regularly and on time. He had told the superintendents to "look at people when they came in, make sure they're good people, had good jobs, people that could afford to pay the rent."

Ross Anderson testified that although the building was apparently run on an "adults only" basis prior to his purchase of it, he did not follow this policy subsequent to taking it over. There were no rules regarding family status. Val Lauzé and Lloyd Rumble confirmed this, also testifying that they had never received any specific instructions from the Andersons that the building was to be an "adults-only" apartment. Furthermore, there were various children, possibly as many as eleven over the Andersons' tenure, living in the building. Val Lauzé's teenage son lived with her, Richard Pawley had two teenage daughters, Margaret Donahue had two sons, and Clara L'Heureux had her grandson living there for about a year. A tenant by the name of Kevin Cook had a baby while living at 104 Oxford Street. Mr. Anderson also made reference to other families with children: Mija, Webber-Ford, Robertson, Hartlieb, Nau.

Ross Anderson testified that Heather Peterson had been a problem tenant almost from the outset. "She started bringing in roommates and then there was trouble." According to Jean Anderson, "pretty nearly every time we went down to the building we always had complaints from the superintendent about something

that had happened." Ross Anderson was also concerned about the change of locks "after one of the girls there had a fight and got kicked out." Val Lauzé confirmed that she was upset about not having a new master key immediately after the lock-change took place, although she did ultimately receive a new key. According to Ross Anderson, the complainant initially objected to signing a lease when they asked for one after the commotion over Cherie's departure: "She said she come in without a lease and she wasn't going to give us one." He confirmed that eventually a lease was signed.

Ross Anderson described the situation as one of "party, after party, after party, nothing but parties from the time she moved in until we got her out of there." Lloyd Rumble testified that he had some complaints about the noise, and that he had to speak to Heather Peterson to tell her to keep it down. However he noted that "there were only a couple [of parties] that I knew of that got out of hand." Val Lauzé appeared somewhat less bothered by parties during her tenure as superintendent, but did report that there had been a few different parties and one complaint.

Ross Anderson described himself as particularly upset by the police visits to Heather Peterson's apartment. The police incident regarding Cherie's departure had been reported to the Andersons by Val Lauzé, and Lloyd Rumble had apparently told them

of another occasion on which he had urged Heather Peterson to call the police. "I don't run a building like that," Ross Anderson stated. Having police cruisers standing outside the building deterred "respectable people" from wanting to rent in the building, he believed.

The combination of roommate problems, noisy parties, and two occasions on which the police ostensibly had to come to the apartment ultimately led superintendent Rumble to raise the matter with the Andersons. According to Ross Anderson:

In the fall of 1986 he [Lloyd Rumble] reported to me that she had a man friend crawling in a window in her apartment, they got in a fight of some kind I don't know, she went up knocking on his door, and wanted him to throw this fellow out, her boyfriend out. [Lloyd Rumble] told me that he told her that he was not a bouncer, if she wanted him out of there to call the police and she did so. He told me she had the police there on two different occasions. He would like if I would go down and talk to her about it, and I did.

Ross Anderson reported that he went to Heather Peterson's apartment that day, and notified her that she had to leave the building. He told her he "had a daughter at one time or another would be getting a job in Stratford, and when she got the job she [Heather Peterson] had to get out, I wasn't puttin' up with her no more." Mary Anderson, one of the Andersons' daughters, obtained a job at the Swiss Chalet in July 1987, and an eviction notice was issued on 3 July 1987. When Mary suddenly came down with ulcerative colitis in July, she was hospitalized for several months and had to abandon the job at Swiss Chalet. Since she was

unable to take the apartment, the Andersons rented it to other tenants.

Jean Anderson had a different version of the angry confrontation that took place between her and Heather Peterson in August 1987:

Someone had said that I was screaming and yelling at her, which wasn't true. I maybe talked in a louder voice than normal, but I was not screaming and yelling at her, and I did not point my finger at her stomach. Definitely not. I've had six children of my own and I wouldn't want someone pointing at me.

Both Ross and Jean Anderson insisted that they had not known that Heather Peterson was pregnant before the eviction notice was issued, and that she was evicted because "of the trouble" she caused, not because of her pregnancy or because they did not want children in the building.

THE BOARD OF INQUIRY'S FINDINGS

Although it is always difficult to make findings of fact when the complainant's and respondents' testimony is directly in contradiction, I have concluded that Heather Peterson's version of the facts is more convincing. While I have no doubt that Heather Peterson's series of roommates bothered the respondents, I do not believe that this was the motivating factor in the eviction. The signing of the lease after Cherie's eviction signified that the Andersons intended to formalize the tenancy, not to terminate it. Heather Peterson followed the procedure she was asked to adopt in notifying the superintendent of all

successive roommates, and there were no further objections.

The allegations concerning numerous noisy parties were soundly denied by Heather Peterson, who testified that she had only two parties throughout her stay at 104 Oxford Street, one of which was a quiet, afternoon Tupperware party. Clara L'Heureux, whose apartment was near the complainant's, testified that she recalled only one loud party at Heather Peterson's, whereas other tenants made noise much more regularly. Marion Davis, the tenant whose apartment was directly above the complainant's, reported that Heather Peterson had never bothered her with noise, although since the new tenants had moved in there had been several disturbances. Furthermore, when the Andersons first provided their respondents' statement to the investigators at the Human Rights Commission, they mentioned nothing regarding loud parties in their list of reasons for evicting Heather Peterson. In sum, I have concluded that parties were not an important factor in the eviction of the complainant.

As for the police visits, Heather Peterson admitted that the police had come to her apartment once regarding Cherie's departure. She admitted that she had called the police from her apartment a second time, in February 1987, to notify them regarding a girlfriend who had received a life-threatening phone call. But she insisted that, contrary to Lloyd Rumble's testimony, no man had ever crawled through her window, nor had

she ever asked the superintendent to throw anyone out, nor had Lloyd Rumble ever suggested she call the police. Police records introduced by the counsel for the Human Rights Commission confirmed this, showing only two calls regarding Heather Peterson's apartment.

These police records did, however, reveal that the police were called regarding other tenants at 104 Oxford Street, as often as an average of once a month between January and September 1987. Several of the calls involved domestic disputes at Lloyd Rumble's apartment, one of which resulted in an arrest. Although Ross Anderson testified that he was not aware of these calls, tenant Clara L'Heureux stated that she had once called the police regarding a loud disturbance between Lloyd Rumble and his girlfriend, and that she had subsequently notified Ross Anderson about it. Even Lloyd Rumble testified that when three police cars arrived at the building after the burglar alarm on his motorcycle was accidentally activated, he later reported the incident to his employer. According to Lloyd Rumble, Ross Anderson had found this incident amusing. In consequence, I have not tended to give much credit to Ross Anderson's allegations that the presence of police cruisers at his apartment building caused him undue alarm. Although Ross Anderson argued that the police presence at Heather Peterson's apartment was a motivating factor for the eviction, I have concluded that this was not the real reason.

It is my view that one of the main reasons for Heather Peterson's eviction was her pending motherhood. Although the respondents denied that they operated the apartment as an "adults-only" building, there was much evidence to the contrary. Tammy Landriault, a tenant who rented an apartment at 104 Oxford Street in mid-July 1986, testified that Lloyd Rumble told her at the time that "children weren't allowed in the building." Laurie Smith, who moved into the building in the fall of 1987, testified that Lloyd Rumble had told her that the Andersons didn't really like children in the building. Richard Pawley, who rented an apartment from Lloyd Rumble in early 1988 was told that they didn't "usually have children in the building," but the superintendent offered to classify Pawley's two daughters, aged fifteen and seventeen, as adults. Marie Pawley, Richard's wife, testified that when the fifteen-year-old daughter became pregnant, she put in her notice to Lloyd Rumble, telling him they had to move because she knew children were not allowed in the building. Lloyd Rumble accepted the notice without comment, although a human rights officer later intervened and they did not move out before the birth. Tara Nichals, who moved into the building in October 1988, testified that Lloyd Rumble told them that they could not "have kids or pets in the apartment." What was more he apparently said, "I know it's against the law and you know it's against the law but...that's the way it is."

It is also my view that Heather Peterson was evicted because

the respondents disapproved of her marital status. In his testimony, Ross Anderson noted that Lloyd Rumble had told him that Heather Peterson had "at least 6 to 8 men running in and out of there in that building, staying with her, at one time or another. My superintendent told me that we should have swinging doors on for the men she has coming in and out." Surmising (apparently incorrectly) that all of these men were boyfriends of the complainant, Ross Anderson testified that he "disapprove[d] of that kind of conduct." In his view, if Heather Peterson had agreed to live with a man, it should be "someone there that has a little respect, not be in there for a month, month and a half and...the next time you've got another one in for a month, month and a half...." He was particularly upset when he learned from Lloyd Rumble that Hugh Jesso was a married man who had one or two children back in Newfoundland. Ross Anderson appears to have been mistaken about this, since Heather Peterson would later testify that Hugh Jesso had been divorced for three years before he moved into her apartment. But Ross Anderson testified under cross-examination that he disapproved of children being born to unmarried parents, that he didn't think "a young girl should be running around with a married man with a family." "After all, we do go to church; maybe she doesn't," he concluded. "She was not a fit person to have in a building, no building."

Even if the Andersons' testimony regarding their concerns about the roommates, parties, and police calls is to be believed,

it is my opinion that Heather Peterson's pregnancy and family status was at least partially responsible for her eviction. Evicting a tenant because she is about to have a baby is an act which contravenes the Ontario Human Rights Code, as constituting discrimination on the basis of sex and family status. Section 2 of the Code guarantees a right to equal treatment in accommodation, regardless of sex and family status. Section 9(2) defines sex to include pregnancy. Although s.20(4) of the Code historically provided an exemption for adults-only apartments in some circumstances, this was repealed on 18 December 1986. Since that date, it has been unlawful to maintain adults-only apartment buildings: (s.10(4) Equality Rights Statute Law Amendment Act, 1986 Bill 7, Royal Assent 18 December 1986).

The evidence adduced by the respondents that there were some children (mostly teenagers) resident in the building does not defeat the complainant's case. It is not necessary to prove that a respondent discriminates against all of the members of a protected class in order to make out discrimination against one. Individuals do not always behave entirely consistently. Frequently those who discriminate make exceptions. Employers who hold biased perspectives about the abilities of women or certain races often employ a few token individuals from the maligned group. Persons who are guilty of sexual harassment rarely harass all of the women under their supervision, selecting only a few. People who hold anti-Semitic views often maintain personal

friendships with some Jews. Rarely are people thoroughly discriminatory in their beliefs and practices. Evidence that a respondent does not discriminate against the whole class cannot outweigh evidence that she or he discriminated in a particular case.

Having found that Ross and Jean Anderson discriminated against Heather Peterson, contrary to the Code, I must now assess damages. The complainant provided proof of special damages for moving expenses in the amount of \$481.00 and cable and telephone reconnection in the amount of \$77.10. She is also entitled to the differential between the rent she paid on her Downie Street apartment and the rent she would have paid at 104 Oxford Street between 1 September 1987 and 31 March 1991, with interest. I will leave it to counsel for the parties to calculate the appropriate amount owing, with the Board of Inquiry remaining seized of the case in the event that there should be any difficulty resolving this matter.

Counsel for the Human Rights Commission and the complainant also argued for an award of general damages, to reflect the mental anguish and loss of dignity. There was some evidence presented by the complainant regarding an attack of pancreatitis requiring hospitalization, allegedly triggered by the stress of the eviction. However, the evidence presented was insufficient to allow me to find that the illness was causally related to the

eviction. In my view, the appropriate award of general damages should be \$1,000, taking into account the means of the respondents, and bearing in mind the need to compensate the complainant and to provide deterrence.

DATE

1 April 1991C Backhouse

Constance Backhouse
Chair, Board of Inquiry